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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANA-LUISA WHITE et al., Plaintiffs and Appellants, v. ALEC R. ANDERSON, Defendant and Respondent.	B155386 (Los Angeles County Super. Ct. No. BC252035)

APPEAL from an order of the Superior Court of Los Angeles County. Ralph Dau, Judge. Affirmed.

The Boesch Law Group and Philip W. Boesch, Jr., for Plaintiffs and Appellants.

Loeb & Loeb, Andrew S. Garb, David C. Nelson and Adam F. Streisand for Defendant and Respondent.

Appellants Ana-Luisa White and Carolina White appeal an order granting the motion of respondent Alec R. Anderson to quash service of the summons and complaint due to his lack of forum contacts. According to the appellants, respondent's contacts with California are sufficient to justify specific personal jurisdiction over him. Alternatively, the appellants contend that the trial court abused its discretion when it refused to grant them a continuance to conduct jurisdictional discovery. Finally, the appellants argue for the first time on appeal that respondent entered a general appearance. We are not persuaded. Respondent's contacts with California are too attenuated to justify specific personal jurisdiction, and the appellants failed to make a prima facie showing of relevant evidence they seek to discover. Further, the appellants waived their general appearance argument by not raising it below.

We affirm.

FACTUAL AND PROCEDURAL HISTORY

1. *The Sobra Trust.*

During his lifetime, Lord Gordon White (Lord White) established the Sobra Trust, a trust formed and existing under the laws of Liechtenstein. Lord White's daughters, the appellants, are the beneficiaries. Respondent is one of several of the Sobra Trust's custodians.

2. *Respondent and his contacts with California.*

Respondent is a Bermuda resident and a citizen of the United Kingdom. He is a partner in the law firm of Conyers, Dill & Pearman, and he practices in his firm's Bermuda office.

Respondent has never been employed, paid taxes or owned property in California. However, he did visit California on three occasions. In 1992, while traveling on unrelated business matters, he stopped over in California to pay a courtesy call on Lord White. They did not discuss business. After Lord White died in 1995, respondent met with the appellants and a third party. At that meeting, respondent informed the appellants that Lord White had left each of them $3 million. Finally, on another occasion, he visited California for three days to meet with one of his firm's Canadian clients.

Since 1995, the appellants communicated with respondent in writing and over the telephone on numerous occasions.

3. *This action.*

The appellants sued various defendants, including respondent, to recover over $100 million allegedly due to them from Lord White's estate. The first amended complaint alleges, inter alia: When Lord White died, he was worth over $400 million and was succeeded by the appellants and his son, Lucas White. The defendants are guilty of unspecified breaches of duty, conflicts of interest, failures to disclose, misrepresentations, and misappropriations of money and property. The appellants assert causes of action for (1) breach of confidential relationship, (2) breach of fiduciary duty, (3) interference with prospective economic advantage, (4) breach of contract, (5) misappropriation of property, (6) fraud, (7) constructive fraud, (8) quiet title, and (9) an accounting.

Further, the first amended complaint states that "this Complaint does not now take[] action against the Sobra Trust, or seek relief against individuals in their capacities as trustees of the Sobra Trust."

After being served with process in Bermuda, respondent moved to quash service of summons and complaint for lack of personal jurisdiction. In their opposition to the motion, the appellants argued that respondent is subject to specific jurisdiction due to his California contacts. In the alternative, they requested a continuance so that they could conduct jurisdictional discovery. The trial court quashed service on appellant.

This timely appeal followed.

DISCUSSION

1. *Personal jurisdiction.*

a. *Standard of review.*

When the determinative facts are not in dispute, the question of whether a defendant is subject to personal jurisdiction is one of law and we are not bound by the trial court's findings. (*Long v. Mishicot Modern Dairy, Inc.* (1967) 252 Cal.App.2d 425, 428-429.) Where there is a conflict in the evidence, the findings of the trial court will not be disturbed on appeal if supported by substantial evidence. (*Felix v. Bomoro Kommanditgesellschaft*

(1987) 196 Cal.App.3d 106, 110.) We test the record in light of the principle that when a defendant moves to quash out of state service of process for lack of personal jurisdiction, the plaintiff bears the burden to establish the existence of jurisdiction by a preponderance of the evidence. (*Kroopf v. Guffey* (1986) 183 Cal.App.3d 1351, 1356.)

b. *The applicable rules.*

California courts may exercise jurisdiction over a nonresident defendant "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.)

"Personal jurisdiction may be either general or specific." (*Vons Companies, Inc. v. Seabest Foods, Inc* (1996) 14 Cal.4th 434, 445 (*Vons*).) Here, the appellants contend only that respondent is subject to specific jurisdiction. "[S]pecific jurisdiction is determined under a three-part test: '(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or results from the defendant's forum-related activities; and (3) exercise of jurisdiction must be reasonable.' [Citation.]" (*Jewish Defense Organization, Inc. v. Superior Court* (1999) 72 Cal.App.4th 1045, 1054.)

c. *Respondent is not subject to specific jurisdiction.*

According to the appellants, respondent's contacts with California were sufficient to create specific jurisdiction. We are not persuaded.

The evidence[1] demonstrates that respondent is a Bermuda attorney who is one of several trustees of a Liechtenstein trust that happens to have beneficiaries in California. It

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[1] We refer only to the evidence in the appellate record. The appellants requested that we take judicial notice of their March 26, 2002, opposition to Lucas White's demurrer to the third amended complaint. We denied that request. Absent exceptional circumstances -- which are not present here -- an appellate court will not take judicial notice of matters not before the trial court. (See *Vons, supra,* 14 Cal.4th at p. 444, fn. 3.) Respondent requested that we take judicial notice of the trial court's April 9, 2002 minute order sustaining

also demonstrates that respondent had a meeting in California and communicated with the appellants regarding that trust. However, the evidence does not establish that respondent committed any of the alleged torts in California, or that any of the alleged torts arise from or relate to respondent's California contacts.[2]

The appellants' briefs are full of conclusions, and therefore fail to defeat the presumption that the trial court's order was correct. The appellants repeatedly state in their briefs that they demonstrated below that their claims arise out of respondent's contacts with California. Which claims relate to what contacts and how, the appellants never specify.

It is axiomatic that "'[t]he reviewing court is not required to make an independent, unassisted study of the record in search of error or grounds to support the judgment. It is entitled to the assistance of counsel. Accordingly every brief should contain a legal argument with citation to authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration.' [Citation.] [¶] It is the duty of [the appellants], not the courts, 'by argument and the citation of authorities to show that the claimed error exists.' [Citation.]" (*Sprague v. Equifax, Inc.* (1985) 166 Cal.App.3d 1012, 1050.) Since the issues as raised in the appellants' opening brief are not properly presented or sufficiently developed to be cognizable, we consider them waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *People v. Turner* (1994) 8 Cal.4th 137, 214, fn. 19.)

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without leave to amend a demurrer by various defendants to the third amended complaint. We granted that request.

[2] The appellants devoted portions of their appellate briefs and time at oral argument to discussing a privilege log produced by third party Greenberg Glusker Fields Claman Machtinger & Kinsella (Greenberg). According to the appellants, the trial court improperly excluded the privilege log as hearsay. We need not resolve this issue. Although the privilege log purports to show that respondent and Greenberg exchanged correspondence, we note that even if the privilege log were admissible it would not change our analysis. Simply put, the privilege log does not demonstrate relatedness of the claims to the contacts.

2. *The request for a continuance to conduct jurisdictional discovery.*

a. *Standard of review.*

"The granting of a continuance for discovery lies in the discretion of the trial court, whose ruling will not be disturbed in the absence of manifest abuse." (*Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487 (*Beckman*).) We will find an abuse of discretion only when a ruling falls outside the bounds of reason. (*People v. Catlin* (2001) 26 Cal.4th 81, 122.)

b. *The trial court did not abuse its discretion.*

The appellants contend that the trial court should have granted their request to conduct jurisdictional discovery. This contention lacks merit.

Beckman is instructive on this point. In *Beckman*, the appellate court affirmed the denial of a plaintiff's request for a continuance, stating: "Finally appellant contends the trial court should have granted a continuance to enable appellant to conduct discovery to attempt to obtain evidence which would support jurisdiction. [Citation.] In his request for continuance appellant did not suggest that discovery was likely to produce evidence of additional California contacts by respondent . . . relating to this transaction. He only suggested a desire to find out if respondent was engaged in 'substantial lending activities in California.' . . . [Citation.] We find no abuse of discretion. In light of the showings already made, the court could reasonably conclude further discovery would not likely lead to production of evidence establishing jurisdiction." (*Beckman*, *supra*, 4 Cal.App.4th at pp. 486-487.)

Upon reviewing the papers the appellants submitted below, we conclude that the trial court's ruling did not exceed the bounds of reason. The appellants submitted declarations, but none of those declarations explained what additional discovery they contemplated. Therefore, the trial court was rationally able to conclude that further discovery was unnecessary.

3. *The general appearance argument.*

The appellants argue that respondent entered a general appearance by arguing the merits of the case in his motion to quash. We have two responses.

First, the appellants did not raise this argument below. Accordingly, we deem this argument waived. "It is a general rule of appellate review that arguments waived at the trial level will not be considered on appeal." (*California State Auto. Assn. Inter-Ins. Bureau v. Antonelli* (1979) 94 Cal.App.3d 113, 122.) "A party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do." (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603.) "[I]t would be wholly inappropriate to reverse a superior court's judgment for error it did not commit and that was never called to its attention." (*People v. Lilienthal* (1978) 22 Cal.3d 891, 896, fn. omitted.)

Second, the appellants' argument is misplaced. *Malone v. Equitas Reinsurance, Ltd.* (2000) 84 Cal.App.4th 1430, 1441, footnote omitted (*Malone*) disposed of the same issue in the following passage: "In closing, we reject plaintiffs' argument that defendants waived their objection to personal jurisdiction by discussing the merits of the case in their motion to quash service of summons. 'Special appearances are not proper occasions for testing the legal or factual merits of a complaint. [Citation.] Nevertheless, when in personam jurisdiction is claimed on the basis of a foreign defendant's alleged forum-related activities in connection with the cause of action pleaded, facts relevant to the question of jurisdiction often bear upon the basic merits of the complaint. . . . When in personam jurisdiction depends on the validity of the substantive claim against the foreign defendant[, it is to be expected that the] defendant's showing on the motion to quash negatives the existence of that claim . . . .' [Citation.]" We agree with the analysis in *Malone*, and adopt it here.

DISPOSITION

The order is affirmed. Respondent shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

ASHMANN-GERST, J.

We concur: NOTT, Acting P. J.
DOI TODD, J.